IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 19986 of 1997

Between:

The Popular Engineering Company, Rep. by its

Prop. Mathamsetty Subba Rao, Convent Street,

Vijayawada - 1.

..... PETITIONER

AND

1 The Commercial Tax Officer,
Convent Street, Vijayawada-520 001.
2 The Asst. Commercial Tax Officer (INT), Convent Street,
Vijayawada - 520 001.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents, collecting the compounding fee of Rs.36,158/- from the petitioner by the 1st respondent U/s. 30(1) (c) of the A.P.G.S.T. Act is illegal, arbitrary and violation of the Principles of natural justice by setting aside the order
dt. 20-2-97 of the Ist respondent herein and consequently direct the respondent to refund the amount of Rs.36,158/- to the petitioner and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.S.Srinivasa Varma.

Counsel for the Respondents: SPL GP FOR TAXES.

The Court made the following:

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THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE C.V. RAMULU

WRIT PETITION NO. 19986 OF 1997

ORDER: (per Sri B. Sudershan Reddy, J)

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The subject matter that arises for consideration in this writ petition is squarely covered by the decision reported in **AMBICA LAMP HOUSE, RAJAHMUNDRY V. COMMERCIAL TAX OFFICER (INT)-I ENFORCEMENT, HYDERABAD.**

Following the said decision, the writ petition is accordingly disposed of with the following observations and directions:

i. Under the provisions of the Act and the Rules, the Officers of the Vigilance/Intelligence Wing of the Department can exercise the powers that are conferred, such as inspection of the business

premises, books of accounts, stock verification etc., apart from recording any statement from any of the responsible person of the business concern;

ii. Basing on such information, if any of the Officer of the said Vigilance or Intelligence Department is empowered to make assessments, such Officer can proceed to frame assessments basing on the material and such assessments could be completed only after complying the procedure provided under the provisions of the Act and the Rules., i.e, granting sufficient opportunity to adduce evidence by the dealer for the proposed assessment i.e., as to the quantities as well as valuation of the stocks etc; otherwise such material or information can be forwarded to the assessing authority having jurisdiction for taking appropriate action including the assessment, reassessment etc.

iii. There shall be at least a gap of one week between the date of an order of assessment, or demand notice, as the case may be, and an order compounding the offence, wherever the dealer comes forward with such an offer.

iv. The judgments in S.R. Traders and Bhavani Traders v. The ACCT & Ors., {(1993 17 APSTJ 125)}, KAKI BUTCHI Raju Son v. State of A.P. {(1994) 19 APSTJ 19)}; Badrinath Oil Company V. Assistant Commissioner, {(1995) 21 APSTJ 28}; Bharat Metals v. Special ACTO and another, 1998 (4) ALD 484 = {(1998) 27 APSTJ 72}; and Sri Lakshmi Venkata Raghava Traders V. CTO (Int. & Enforcement Wing) {W.P.NO.10668/1993}, cannot be said to be the authorities for the proposition that the inspecting officials of the Commercial Tax Department are empowered to pass orders compounding the alleged offences on the same day of inspection and to collect the amount specified in such orders, on the same day;

v. After completion of the assessment, it is open to the department to issue a demand notice along with the assessment order by providing time as contemplated under the provisions of the Act for collection of the tax.

vi. If any penalty proceedings are initiated by the competent authorities, even such proceedings are to be completed after giving notice and sufficient opportunity to the dealer, and thereafter the penalty order could be served along with a notice of demand, giving sufficient time for payment of the amount of penalty, if levied.

vii. If the penalty proposed is unrelated to the assessment of the tax liability, such penalty could be levied independent of the assessment proceedings, but if penalty is related to the assessable tax, such penalty proceedings could be initiated and completed only after

completion of the assessment and not before.

viii. The petitioners shall be refunded the amounts collected from them, or be provided with an option to agree for adjustment of the same towards payment of the tax in future.

ix. If the inspecting authorities are of the opinion that the books of account are required to be seized, they can do so only in accordance with the procedure contemplated under the Act and the Rules and not otherwise. Similarly even with reference to the seizure of the goods, the same is to be done as per the procedure provided, and in such cases, the dealer can also avail the benefit of getting the release of the goods on furnishing security as provided under the provisions of the Act and the Rules.

x. The Commissioner of Commercial Taxes is further directed to issue necessary circular to comply the directions of this Court by all the concerned officers.

It is needless to observe that it shall always be open to the Department to proceed further in the matter depending upon the information that may be available or that may be forthcoming for making any further assessment in accordance with law. No costs.

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B. SUDERSHAN REDDY,J

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C.V.RAMULU, J

26-04-2005

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To

1 The Commercial Tax Officer,
Convent Street, Vijayawada-520 001.
2 The Asst. Commercial Tax Officer (INT), Convent Street,
Vijayawada - 520 001.

3. Two CCs to the Special Government Pleader for Taxes, High Court of Andhra Pradesh, Hyderabad (OUT).

4. Two CD copies.